



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL OCEAN SERVICE
Office of Ocean and Coastal Resource Management
Silver Spring, Maryland 20910

MEMORANDUM

Date: June 5, 2001

For: State Coastal Impact Assistance Program Leads

From: John R. King /s/
Acting Chief, Coastal Programs Division

Subject: Revised Program Administration and Plan Development Guidance for the Coastal Impact Assistance Program

Attached is the revised Program Administration and Plan Development Guidance for the Coastal Impact Assistance Program (CIAP). The revised guidance includes a number of changes in response to comments received on the draft guidance. These changes include, updated information on plan development, certification, review, and approval; authorized uses of funds; disbursement of funds; and NOAA's responsibilities to comply with the National Environmental Policy Act and other federal statutes. A list of comments and responses is attached to the guidance as Appendix C.

We have been impressed with the progress that the states have made over the past several months, and we look forward to receiving and reviewing your plans. If you have any further comments or questions, please contact me at (301) 713-3155, extension 188 or john.king@noaa.gov.

Attachment

Coastal Impact Assistance Program Revised Program Administration and Plan Development Guidance

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I INTRODUCTION

The fiscal year 2001 appropriations act for the Departments of Commerce, Justice, and State created the Coastal Impact Assistance Program (CIAP) by amending the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.). The statutory language can be found in Appendix C. The CIAP recognizes that impacts from Outer Continental Shelf (OCS) oil and gas activities fall disproportionately on the coastal states and localities nearest to where the activities occur, and where the associated facilities are located. The CIAP legislation appropriates money to the Secretary of Commerce who will disburse it to eligible states and coastal political subdivisions, and requires the states to submit Coastal Impact Assistance Plans detailing how the funds will be expended. This guidance provides information necessary for eligible states and coastal political subdivisions to participate in the CIAP.

Alabama, Alaska, California, Florida, Louisiana, Mississippi, and Texas are the seven eligible states.¹ Counties, parishes, or equivalent units of government within those states lying all or in part within the coastal zone as defined by section 304(1) of the Coastal Zone Management Act of 1972, as amended (CZMA), are the coastal political subdivisions eligible for CIAP funding (§31(a)(1)), a total of 147 local jurisdictions.

States must develop CIAP plans and submit them to the National Oceanic and Atmospheric Administration (NOAA) by July 1, 2001, and NOAA has 90 days from receipt to complete review (§31(d)(1), (3)). If a state has not submitted a plan by July 1, 2001, NOAA will hold the funds in escrow provided that the state is making a good faith effort to develop and submit its CIAP plan (§31(c)(4)). Since July 1, 2001, falls on a Sunday, NOAA will accept the plans on July 2, 2001. NOAA must approve the plan before disbursing any funds (§31(d)(2)).

II FUNDING ALLOCATIONS

The total fiscal year 2001 appropriation is \$149,670,000.² Congress authorized and appropriated funds for the CIAP for fiscal year 2001 only. NOAA may utilize no more than five percent of the available funding to cover some of the costs of program administration. These costs include legal and program work for developing and implementing the program; financial assistance expertise to ensure prompt delivery of funds; technical assistance to address other statutory requirements such as the National Environmental Policy Act (NEPA), Endangered Species Act (ESA), the Essential Fish Habitat provisions of the Sustainable Fisheries Act, Coastal Barrier Resources Act, National Historic Preservation Act, Americans with Disabilities Act, and others;

¹ “Producing Coastal States” are eligible to receive CIAP funds, defined in §31(a)(7) as those states “with a coastal seaward boundary within 200 miles from the geographic center of a leased tract other than a leased tract within any area of the Outer Continental Shelf where a moratorium on new leasing was in effect as of January 1, 2000, unless the lease was issued prior to the establishment of the moratorium and was in production on January 1, 2000.”

² This is \$150,000,000 less the 0.22% across the board reduction mandated in the appropriations act.

technical needs for funding formula development; and other costs such as printing and public notices. Until the state plans have been submitted, it is difficult to predict the costs of complying with NEPA, ESA, and other federal authorities. If less than five percent is required for program administration, we will look to reallocate the remaining funds to the states and coastal political subdivisions.

The CIAP legislation allocates funds to eligible states and coastal political subdivisions according to a formula based on revenues from OCS leases, shoreline mileage and population of coastal political subdivisions, and distance from coastal political subdivisions to the OCS leased tracts. NOAA completed and released the allocations on April 16, 2001. Appendix A identifies the data sources used in developing the allocations.

III DEVELOPING THE COASTAL IMPACT ASSISTANCE PLAN

Each Governor must designate a state agency to develop the Coastal Impact Assistance Plan. Coastal political subdivisions must supply a point of contact to the Governor's designated agency and a description of how they will expend their allotted funds. The local projects will be incorporated into the state plan and the Governor must certify that the uses of funds by the coastal political subdivisions are consistent with the authorized uses of funds specified in §31(e) (§31(d)(2)(C)). Federal funds appropriated to the states under sections 306 or 309 of the CZMA may be used to develop the plan. See section IV.A. for more information on how states and coastal political subdivisions may incur CIAP costs before the funds are disbursed.

A. Public Participation

The CIAP legislation requires local input and public participation in the development of the plan (§31(d)(1)). This can be achieved through a variety of means: use of advisory committees; commission meetings; informal public workshops; or formal public hearings. At a minimum, states should involve the public in plan development, provide adequate public notice of plan availability, and a 30-day public comment period.

States should complete the 30-day public review period prior to July 1, so that the plans may be revised as necessary based on public comments before they are submitted by the statutory deadline. States may submit a draft plan to NOAA at the same time it is made available for public review. This will expedite NOAA's review and approval and allow NOAA to disburse the funds as quickly as possible.

B. Level of Detail

The plan must describe the individual state and local projects in as much detail as available. For most projects, a total budget will be sufficient, rather than a budget broken down into object class

categories (e.g., personnel, equipment, contracts, etc.). However, NOAA reserves the right to request additional budget detail for large or complex projects.

Given the extremely ambitious schedule established in the legislation, and that state and local funding allocations were not completed until April 16, 2001, NOAA understands that many specific state and local projects may not be finalized by the July 1, 2001, due date. In addition, some states may want to spend more time working with state and local agencies to encourage the most beneficial use of funds.

Therefore, NOAA will approve plans that describe generally how the state and coastal political subdivisions will expend their funds, i.e., by specifying the types of eligible projects they may undertake rather than complete project descriptions. However, NOAA must approve the specific local projects and comply with NEPA, etc., before the funds are disbursed and the projects are undertaken. Before the funds are disbursed, the state, and coastal political subdivisions will submit a project description in sufficient detail to allow NOAA to review and approve it in accordance with the CIAP legislation.

1. Deadline

The CIAP legislation has a deadline of July 1, 2001, for submittal of CIAP plans (since July 1, 2001, falls on a Sunday, NOAA will accept the plans on July 2, 2001). NOAA cannot extend the deadline beyond that date. However, the CIAP legislation gives NOAA the authority to hold funds in escrow for a state provided that the state is making a good faith effort to develop and submit, or update, a CIAP Plan (§31(c)(4)). We recognize the difficult time lines and will use this authority to hold funds in escrow while a state completes its Plan. Our goal is to ensure that all states and counties receive their share of the CIAP funding in a timely manner, and we will work with you to see that this happens. States that are not going to meet the July 1, 2001 deadline should submit a letter or e-mail to NOAA briefly describing their plan development process and a target date for plan submittal.

C. Project Funding

Only the designated state agency and eligible coastal political subdivisions are guaranteed to receive funds under the CIAP legislation. However, the designated state agency and coastal political subdivisions may make sub-awards to other state or local agencies, universities, or other entities. The state or a coastal political subdivision may make sub-awards to municipalities within the coastal zone or coastal watershed for authorized projects. All projects do not need to be undertaken solely within the state's coastal zone; for example, the state or a coastal political subdivision may fund a watershed management plan that includes areas beyond the state's coastal zone. Coastal political subdivisions may combine their allocations to fund larger, mutually beneficial projects, or a state may choose to contribute some of its funding to a coastal

political subdivision to allow that locality to fund a larger project. A coastal political subdivision may not receive less than its authorized allocation, however, unless the Governor or NOAA finds that its proposed uses of funds are inconsistent with the CIAP legislation, or the coastal political subdivision chooses to give up some or all of its allotted funds (see section D. Governor's Certification below).

D. Governor's Certification

Each coastal political subdivision must supply a point of contact and description of how it will expend its allotted funds. The coastal political subdivision must supply this information to the Governor, for the Governor to include in the plan. The Governor must certify that the uses of funds for local projects are consistent with the uses specified in the CIAP legislation (§31(d)(2)(C)). However, the Governor may not direct local funds toward or away from any authorized uses, with the exception of the limitation on infrastructure and other public service needs discussed in section IV of this document. If the Governor or NOAA find that uses of funds proposed by some coastal political subdivisions are inconsistent with the CIAP legislation, and the subdivisions are not making a good faith effort to revise the uses of their funds, or if some coastal political subdivisions choose not to participate in the CIAP, NOAA will allocate those funds to the remaining coastal political subdivisions in the state.

E. Plan Outline

To expedite disbursement of funds, NOAA recommends that the plan be written and submitted in sufficient detail to serve as a grant application. The CIAP legislation includes five elements which must be included in the plan, detailed in §31(d)(2)(A)-(E). To ensure the required elements are included in the plan, NOAA recommends the following outline:

1. Designated State agency

The CIAP legislation requires that the plan provide the name of the state agency that will have the authority to represent and act for the State in dealing with the Secretary for purposes of the program (§31(d)(2)(A)). The seven governors have already designated agencies to serve as CIAP points of contact NOAA will assume that the currently designated agency remains the point of contact until we receive different information from the Governor. The Governor may make this determination at any time, even after plan approval.

2. Certification

The CIAP legislation requires a certification by the Governor that the uses of funds proposed by the coastal political subdivisions are consistent with the requirements of the program (§31(d)(2)(A)); and that ample opportunity has been accorded for public

participation in the development of the plan (§31(d)(2)(D)). The certification can take the form of a letter from the Governor submitting the plan to NOAA, or an opening statement from the Governor in the plan itself. The plan should be submitted to the Secretary of Commerce.

3. Public Participation

This section should describe how the public and coastal political subdivisions were involved in the development of the CIAP Plan (see section III.A. above)

4. Implementation Program

The CIAP legislation requires that the state plan contain "a program for the implementation of the plan which describes how the amounts provided under this section will be used" (§31(d)(2)(B)). NOAA anticipates that this section will be the bulk of the plan and will be central to NOAA's determination whether a state plan is consistent with the purposes specified in the CIAP legislation. A suggested format for this section is the following:

- (1) a brief description of what the state hopes to achieve under the plan;
- (2) a description of the major activities and/or categories to be funded under the plan (e.g., infrastructure, habitat restoration, acquisition, construction, etc.);
- (3) a description of how the state will implement the plan (e.g., through state agencies, requests for project proposals, competitive grants, etc.); and
- (4) an estimate of the amount of funds that will be spent on each activity or category.

When describing specific projects, the plan should describe the projects in the following manner:

- (1) a one or two paragraph abstract plus up to two pages of background/additional detail, if necessary;
- (2) a brief explanation of how the project is consistent with at least one of the uses authorized by the program; and
- (3) the total cost of the project (NOAA reserves the right to request additional budget detail for large or complex projects).

The overall plan must contain a single budget broken down by object classes. See sections III.B-D of this document for more information on project selection and funding. All projects in the plan must be consistent with the uses of funds specified in the legislation.

5. Coordination with Other Federal Resources and Programs

The CIAP legislation requires that plans contain “measures for taking into account other relevant federal resources and programs.” (§31(d)(2)(E)) Examples of other federal resources and programs include: Coastal Zone Management Programs; National Estuarine Research Reserves; National Marine Sanctuaries; National Estuary Programs; National Wildlife Refuges and other preservation areas; restoration programs such as NOAA’s Community-Based Habitat Restoration and Damage Assessment and Restoration Programs; federally funded conservation, development, or transportation projects; and federally mandated activities such as wetlands or endangered species protection. Projects funded under the CIAP should be consistent with other federal programs.

The plan should describe generally how the activities funded under the CIAP take into account other federal programs. This could be done through the public involvement process by ensuring that federal agencies are able to review and comment on the plan, through an existing state clearinghouse process whereby specific funding proposals are brought to the attention of federal and state agencies, or through similar means.

Specific activities funded under the CIAP should be coordinated with federal resources and programs wherever possible. For example, a state or local government could use some CIAP funds to expand or improve an existing restoration project, or acquire habitat areas needed to protect endangered species, or develop and implement regional restoration plans, or to apply best management practices to reduce nonpoint source pollution from land-based activities.

6. Coastal Political Subdivision Information

The CIAP legislation requires that the plan identify a contact for each coastal political subdivision (§31(d)(2)(C)). The list may be attached to the plan and should include the name of each coastal political subdivision, the name of the subdivision's contact and the contact's phone number and e-mail address.

The legislation also requires that the plan contain a description of how coastal political subdivisions will use the amounts provided by the program. This section should contain a description of each political subdivision's plan that follows the format described in III.E.4.

F. Plan Amendments

Section 31(d)(4) of the CIAP legislation states that any amendment to the CIAP Plan shall be prepared according to the requirements and procedures of the Plan itself, including public involvement, Governor's certification, etc. For ease of administration, NOAA will use a similar process for reviewing plan amendments as we do for reviewing changes to state Coastal Zone Management Programs. There is an abbreviated process for minor changes and a more involved process for major changes. NOAA realizes that some minor changes to CIAP Plans may not constitute "amendments" and may be undertaken simply by notifying NOAA of the proposed change.

The plan amendment process may also be used by states to obtain NOAA approval of specific state or local projects after the overall CIAP Plan has been submitted. However, NOAA may not disburse the funds to be expended on those projects until the specific projects have been approved.

IV AUTHORIZED USES OF FUNDS

The legislation identifies several categories of authorized uses of funds (§31(e)). The specific authorized uses of funds are:

1. uses set forth in new section 32(c)(4) of the Outer Continental Shelf Lands Act proposed by the amendment to H.R. 701 of the 106th Congress as reported by the Senate Committee on Energy and Natural Resources. Those uses are:
 - (A) activities which support and are consistent with the Coastal Zone Management Act, including National Estuarine Research Reserve programs, the National Marine Sanctuaries Act, the Magnuson-Stevens Fishery Conservation and Management Act, or the National Estuaries program;
 - (B) conservation, restoration, enhancement or protection of coastal or marine habitats including wetlands, estuaries, coastal barrier islands, coastal fishery resources and coral reefs, including projects to remove abandoned vessels or marine debris that may adversely affect coastal habitats;
 - (C) protection, restoration and enhancement of coastal water quality consistent with the provisions of the Coastal Zone Management Act (16 U.S.C. 1451 et seq.), including the reduction or monitoring of coastal polluted runoff or other coastal contaminants;
 - (D) addressing watershed protection or other coastal or marine conservation needs which cross jurisdictional boundaries;

(E) assessment, research, mapping and monitoring of coastal or marine resources and habitats, including, where appropriate, the establishment and monitoring of marine protected areas;

(F) addressing coastal conservation needs associated with seasonal or otherwise transient fluctuations in coastal populations;

(G) protection and restoration of natural coastline protective features, including control of coastline erosion;

(H) identification, prevention and control of invasive exotic and harmful non-indigenous species;

(I) assistance to local communities to assess, plan for and manage the impacts of growth and development on coastal or marine habitats and natural resources, including coastal community fishery assistance programs that encourage participation in sustainable fisheries; and

(J) projects that promote research, education, training and advisory services in fields related to coastal and Great Lakes living marine resource use and management;

2. projects and activities for the conservation, protection or restoration of wetlands;
3. mitigating damage to fish, wildlife or natural resources, including such activities authorized under subtitle B of title IV of the Oil Pollution Act of 1990 (oil spill removal and contingency planning);
4. planning assistance and administrative costs of complying with the provisions of this section;
5. implementation of Federally approved marine, coastal, or comprehensive conservation management plans; and
6. onshore infrastructure projects and other public service needs intended to mitigate the environmental effects of Outer Continental Shelf activities (up to 23 percent of allocation).

Please note that the CIAP legislation limits funds spent on category six above to 23 percent of the total funds allocated to each state (including the portion allocated to coastal political subdivisions). Thus, each plan may expend up to 23 percent on onshore infrastructure projects and other public service needs, but there is no restriction on whether portions of the state or local allocations, or both, are used for these purposes. The state plan must clearly identify which

projects fall into this category and the Governor must ensure that no more than 23 percent of the funds are spent on eligible onshore infrastructure projects and other public service needs. The descriptions of these types of project must include information on how the projects meet the statutory requirement of mitigating the environmental effects of Outer Continental Shelf activities.

For CIAP purposes, NOAA has developed proposed definitions of infrastructure and non-infrastructure:

Infrastructure - Design, engineering, and construction of public services and facilities (such as buildings, roads, bridges, sewer and water lines, wastewater treatment facilities, detention/retention ponds, seawalls, breakwaters, piers, port facilities) needed to support commerce as well as economic development. Infrastructure encompasses land acquisition, new construction, and upgrades and repairs to existing facilities.

Non-infrastructure - Projects that involve construction-type activities that are not considered infrastructure include: wetlands/coastal habitat protection and restoration, vegetative erosion control, and beach re-nourishment (however, sea walls, breakwaters, etc, that may accompany beach re-nourishment projects are considered infrastructure). Small scale construction projects for public access and resource protection purposes (similar to CZMA section 306A projects) such as boardwalks, dune walkovers, hiking trails, recreational boat ramps, and picnic shelters, as well as land acquisition associated with these projects, are not considered infrastructure.

These are still considered proposed definitions, and they may be revised to reflect state comments.

A. Incurring Costs before CIAP Plan Approval

If a grant mechanism is used to disburse the CIAP funds, states and coastal political subdivisions may request “pre-award costs,” i.e., a task or set of tasks describing the administrative costs incurred by the state and/or counties prior to plan submittal and approval. Pre-award costs would allow states and coastal political subdivisions to use CIAP funds to pay for eligible costs incurred before the CIAP plans are approved and funds disbursed. Only pre-award costs incurred after March 1, 2001, when NOAA released the preliminary draft CIAP guidance, may be recovered by CIAP funds. States or coastal political subdivisions may begin work on eligible projects prior to the disbursement of funds at their own risk, i.e., funding is not guaranteed until NOAA reviews and approves the state CIAP plan.

V PLAN REVIEW AND APPROVAL

NOAA has 90 days from receipt of the plan to review it and make an approval decision. NOAA's review will be based on the five program approval criteria specified in the CIAP legislation (§31(d)(2)(A)-(E)). This includes a review of the Governor's certification that all uses of local funds are consistent with the legislation. If NOAA does not approve the plan, NOAA will work with the state to revise it until it can be approved, and hold the funds in escrow until the plan is approved as called for in the CIAP legislation (§31(4)). If the state is not making good faith effort to develop, submit, or update the plan, NOAA may allocate those funds to the remaining states and coastal political subdivisions.

VI COMPLIANCE WITH FEDERAL AUTHORITIES

The approval of CIAP plans and disbursement of funds are federal activities subject to authorities such as the National Environmental Policy Act (NEPA), Endangered Species Act (ESA), the federal consistency provisions of the CZMA, the Essential Fish Habitat provisions of the Sustainable Fisheries Act, Coastal Barrier Resources Act, National Historic Preservation Act, and Americans with Disabilities Act. As the federal funding agency, NOAA is responsible for complying with these and other relevant authorities before disbursing funds.

NOAA is working to determine the best process for complying with these authorities. NOAA is now developing an Environmental Assessment for our approval of the seven state CIAP plans, and once we receive specific project proposals we will determine what additional reviews will be necessary. NOAA may ask for the states' assistance in providing information on specific projects to facilitate this task and the disbursing of funds. Such information could include an assessment of the projects' potential impacts on threatened and endangered species and their habitats, coastal resources, and the coastal environment.

NOAA uses a "Section 306A Project Checklist" for construction and land acquisition projects funded under section 306A of the CZMA. The checklist is used to ensure funded projects comply with NEPA, ESA, and other federal programs. We may distribute a modified checklist that states and counties have the option of using as a screening tool for CIAP projects to ascertain which projects require additional NEPA, ESA, or other compliance review beyond the initial Environmental Assessment on the state CIAP plan. The checklist is currently under review by the Office of Management and Budget under the Paperwork Reduction Act. Once the review is complete, NOAA will forward the Checklist to the states. The use of the checklist does not affect the eligibility of any project under the CIAP.

A. Federal Consistency

State and local agencies applying for CIAP funds may be subject to federal consistency under 15 CFR part 930, subpart F (Federal assistance activities). Pursuant to section 31(d)(2)(C) of the

Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq), as amended by the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, the Governor of each participating state must certify that all state and local expenditures are consistent with the overall CIAP plan. Thus, federal consistency can be conducted for the plans and in that case consistency would not be required for each expenditure proposal. A consistency certification would need to be prepared even in cases where the state agency responsible for preparing the CIAP plan is also the state coastal management agency designated under the CZMA and the CZMA federal consistency regulations (15 CFR § 930.11 (o)). This will ensure compliance with the public participation requirements under the CZMA. Described below are the general federal consistency requirements for federal assistance activities.

Review procedures

Federal consistency review for federal assistance activities is normally conducted through procedures established by states pursuant to Executive Order 12372– intergovernmental review of federal programs. The agency preparing the CIAP plan should submit the plan for consistency review through the intergovernmental review process or directly to the state coastal management agency responsible for implementing the coastal management program (CMP). In addition to the plan, the state agency should provide a brief evaluation of the relationship of the proposed activities in the plan and any reasonably foreseeable effects on the state’s coastal uses or resources to the CMP’s enforceable policies. 15 CFR § 930.94(c).

Please contact the federal consistency coordinator in your state coastal management agency or the CIAP contacts at NOAA for further information on federal consistency.

VII DISBURSING THE COASTAL IMPACT ASSISTANCE PROGRAM FUNDS

NOAA is exploring ways to disburse the funds that will minimize the administrative burden for states and coastal political subdivisions. If a grant mechanism is used, NOAA will award individual grants directly to the state and all coastal political subdivisions within the state.

NOAA is also exploring whether we may award a single grant to a state, with the state then issuing sub-awards or contracts to the coastal political subdivisions. We would use the latter method only if agreed upon by the state and coastal political subdivisions. In this scenario, we would view the state as a transfer agent. However, states may not use part of the 35 percent of CIAP funds allocated to coastal political subdivisions for this administrative task. The coastal political subdivisions would be guaranteed their formula allocation of funds to be spent on their projects that are part of the state plan.

If NOAA selects a grant as the appropriate funding mechanism, we will request states and coastal political subdivisions to submit the required forms with their plan submittal. This will help expedite the delivery of funds once NOAA approves the state CIAP plan.

If a grant mechanism is used, states and coastal political subdivisions would be able to draw down funds on a “pay as you go” basis. This means that funds may be drawn down a reasonable amount of time in advance of when they are needed. The Department of Commerce Financial Assistance Standard Terms and Conditions (October 1998) state that “Advance [payments] shall be limited to the minimum amounts necessary to meet immediate disbursement needs...Advances shall be approved for periods not to exceed 30 days.” If a grant mechanism is used, NOAA will provide additional information on this topic.

The CIAP legislation does not have a time limit for expenditure of the funds. However, a NOAA grant to a state or coastal political subdivision would need an end date. NOAA will issue grants with a time period of three years. The grant period could be extended, if necessary.

A. Trust Funds

The CIAP legislation allows states and coastal political subdivisions to deposit funds in trust funds dedicated to uses consistent with the legislation (§31(e)). Trust funds should be established in accordance to relevant state or local laws and procedures. However, the Department of Commerce has determined that any interest generated from the trust fund must be returned to the federal government. The “Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments” (15 CFR Part 24) provide that advance payments made to a recipient are to be placed in an interest-bearing account until actually disbursed and that the interest earned is to be returned to the Federal government. The issue, then, is whether placing the money in the trust funds constitutes a “disbursement.” The Department of Commerce has determined that placing the CIAP grant money in the trust fund would not be considered a disbursement and therefore the interest would need to be returned to the federal government.

VIII COMPLIANCE WITH AUTHORIZED USES OF FUNDS

The CIAP legislation states that if NOAA finds that a state or coastal political subdivision has expended funds inconsistent with the specified uses, NOAA will not disburse any further amounts under the CIAP until the funds in question have been repaid or obligated for authorized uses (§31(f)). NOAA would cease disbursing funds directed only toward the specific jurisdiction, not all funds covered under a single grant, under this scenario.

To ensure all funds are spent on authorized uses, the states and coastal political subdivisions will submit annual progress reports to NOAA until all funds have been expended. NOAA will accept separate reports from the state and each coastal political subdivision, so the state will not need to

receive and collate local reports (the state may choose to receive local reports). The report must include all uses of state and local funds. At a minimum, the report should include:

- (1) any approved amendments and/or extensions to the CIAP plan;
- (2) an identification of the projects approved in the plan;
- (2) the status of each project, including accomplishments and expenditures to date;
- (3) estimated time for completion; and
- (4) for completed projects, submittal of relevant work products (e.g., reports, data sets, links to on-line photographs, etc.)

If some or all the funds have been deposited in a trust fund, the trust fund must report annually on the uses of those funds.

Appendix A – Sources of data for Coastal Impact Assistance Program Allocations

The CIAP calls for funds to be allocated to states and coastal political subdivision according to a formula taking into account several factors: revenue from Outer Continental Shelf (OCS) leases; population and length of coastline of coastal political subdivision; and distance from OCS leases to the states and coastal political subdivisions. Several data sets were needed to develop the allocation formula. The following table describes the sources of data.

State Allocations	
Qualified Outer Continental Shelf Revenues	Minerals Management Service lease records
Coastline Boundary	Minerals Management Service baseline used for the Submerged Lands Act
Geographic Center of OCS Leased Tract	Minerals Management Service geographic data
Coastal Political Subdivision Allocations	
Population	U.S. Census Bureau – 1990 Census
Coastline Length	NOAA Medium Resolution Shoreline; Alaska Coastline 1 to 63,360
Border of Coastal Political Subdivision	U.S. Census Bureau – TIGER/Line Files, Redistricting Census 2000
Geographic Center of OCS Leased Tract	Minerals Management Service geographic data

Appendix B – Statutory Language

SEC. 903. COASTAL IMPACT ASSISTANCE.

The Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.) is amended by adding at the end the following:

`SEC. 31. COASTAL IMPACT ASSISTANCE.

`Nothing in this section shall be construed as a permanent authorization.

`(a) DEFINITIONS- When used in this section--

`(1) The term `coastal political subdivision' means a county, parish, or any equivalent subdivision of a Producing Coastal State all or part of which subdivision lies within the coastal zone (as defined in section 304(1) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1453(1)).

`(2) The term `coastal population' means the population of all political subdivisions, as determined by the most recent official data of the Census Bureau, contained in whole or in part within the designated coastal boundary of a State as defined in a State's coastal zone management program under the Coastal Zone Management Act (16 U.S.C. 1451 et seq.).

`(3) The term `Coastal State' has the same meaning as provided by subsection 304(4) of the Coastal Zone Management Act (16 U.S.C. 1453(4)).

`(4) The term `coastline' has the same meaning as the term `coast line' as defined in subsection 2(c) of the Submerged Lands Act (43 U.S.C. 1301(c)).

`(5) The term `distance' means minimum great circle distance, measured in statute miles.

`(6) The term `leased tract' means a tract maintained under section 6 or leased under section 8 for the purpose of drilling for, developing, and producing oil and natural gas resources.

`(7) The term `Producing Coastal State' means a Coastal State with a coastal seaward boundary within 200 miles from the geographic center of a leased tract other than a leased tract within any area of the Outer Continental Shelf where a moratorium on new leasing was in effect as of January 1, 2000, unless the lease was issued prior to the establishment of the moratorium and was in production on January 1, 2000.

`(8) The term `qualified Outer Continental Shelf revenues' means all amounts received by the United States from each leased tract or portion of a leased tract lying seaward of the zone defined and governed by section 8(g) of this Act, or lying within such zone but to which section 8(g) does not apply, the geographic center of which lies within a distance of 200 miles from any part of the coastline of any Coastal State, including bonus bids, rents, royalties (including payments for royalties taken in kind and sold), net profit share payments, and related late payment interest. Such term does not include any revenues from a leased tract or portion of a leased tract that is included within any area of the Outer Continental Shelf where a moratorium on new leasing was in effect as of January 1, 2000, unless the lease was issued prior to the establishment of the moratorium and was in production on January 1, 2000.

`(9) The term `Secretary' means Secretary of Commerce.

`(b) AUTHORIZATION- For fiscal year 2001, \$150,000,000 is authorized to be appropriated for the purposes of this section.

`(c) IMPACT ASSISTANCE PAYMENTS TO STATES AND POLITICAL SUBDIVISIONS- The Secretary shall make payments from the amounts available under this section to Producing Coastal States with an approved Coastal Impact Assistance Plan, and to coastal political subdivisions as follows:

`(1) ALLOCATIONS TO PRODUCING COASTAL STATES- In each fiscal year, each Producing Coastal State's allocable share shall be equal to the sum of the following:

`(A) 60 percent of the amounts appropriated shall be equally divided among all Producing Coastal States;

`(B) 40 percent of the amounts appropriated for the purposes of this section shall be divided among Producing Coastal States based on Outer Continental Shelf production, except that of such amounts no Producing Coastal State may receive more than 25 percent in any fiscal year.

`(2) CALCULATION- The amount for each Producing Coastal State under paragraph (1)(B) shall be calculated based on the ratio of qualified OCS revenues generated off the coastline of the Producing Coastal State to the qualified OCS revenues generated off the coastlines of all Producing Coastal States for the period beginning on January 1, 1995 and ending on December 31, 2000. Where there is more than one Producing Coastal State within 200 miles of a leased tract, the amount of each Producing Coastal State's payment under paragraph (1)(B) for such leased tract shall be inversely proportional to the distance between the nearest point on the coastline of such State and the geographic center of each leased tract or portion of the leased tract (to the nearest whole mile) that is within 200 miles of that coastline, as determined by the Secretary. A leased tract or portion of a leased tract shall be excluded if the tract or portion is located in a geographic area where a moratorium on new leasing was in effect on January 1, 2000, unless the lease was issued prior to the establishment of the moratorium and was in production on January 1, 2000.

`(3) PAYMENTS TO COASTAL POLITICAL SUBDIVISIONS- Thirty-five percent of each Producing Coastal State's allocable share as determined under paragraph (1) shall be paid directly to the coastal political subdivisions by the Secretary based on the following formula, except that a coastal political subdivision in the State of California that has a coastal shoreline, that is not within 200 miles of the geographic center of a leased tract or portion of a leased tract, and in which there is located one or more oil refineries shall be eligible for that portion of the allocation described in paragraph (C) in the same manner as if that political subdivision were located within a distance of 50 miles from the geographic center of the closest leased tract with qualified Outer Continental Shelf revenues:

`(A) 25 percent shall be allocated based on the ratio of such coastal political subdivision's coastal population to the coastal population of all coastal political subdivisions in the Producing Coastal State.

`(B) 25 percent shall be allocated based on the ratio of such coastal political subdivision's coastline miles to the coastline miles of all coastal political subdivisions in the Producing Coastal State.

`(C) 50 percent shall be allocated based on the relative distance of such coastal political subdivision from any leased tract used to calculate that Producing Coastal State's allocation using ratios that are inversely proportional to the distance between the point in the coastal political subdivision closest to the geographic center of each leased tract or portion, as determined by the Secretary. For purposes of the calculations under this subparagraph, a leased tract or portion of a leased tract shall be excluded if the leased tract or portion is located in a geographic area where a moratorium on new leasing was in effect on January 1, 2000, unless the lease was issued prior to the establishment of the moratorium and was in production on January 1, 2000.

`(4) FAILURE TO HAVE PLAN APPROVED- Any amount allocated to a Producing Coastal State or coastal political subdivision but not disbursed because of a failure to have an approved Coastal Impact Assistance Plan under this section shall be allocated equally by the Secretary among all other Producing Coastal States in a manner consistent with this subsection except that the Secretary shall hold in escrow such amount until the final resolution of any appeal regarding the disapproval of a plan submitted under this section. The Secretary may waive the provisions of this paragraph and hold a Producing Coastal State's allocable share in escrow if the Secretary determines that such State is making a good faith effort to develop and submit, or update, a Coastal Impact Assistance Plan.

`(d) COASTAL IMPACT ASSISTANCE PLAN-

`(1) DEVELOPMENT AND SUBMISSION OF STATE PLANS- The Governor of each Producing Coastal State shall prepare, and submit to the Secretary, a Coastal Impact Assistance Plan. The Governor shall solicit local input and shall provide for public participation in the development of the plan. The plan shall be submitted to the Secretary by July 1, 2001. Amounts received by Producing Coastal States and coastal political subdivisions may be used only for the purposes specified in the Producing Coastal State's Coastal Impact Assistance Plan.

`(2) APPROVAL- The Secretary shall approve a plan under paragraph (1) prior to disbursement of amounts under this section. The Secretary shall approve the plan if the Secretary determines that the plan is consistent with the uses set forth in subsection (e) and if the plan contains each of the following:

`(A) The name of the State agency that will have the authority to represent and act for the State in dealing with the Secretary for purposes of this section.

`(B) A program for the implementation of the plan which describes how the amounts provided under this section will be used.

`(C) A contact for each political subdivision and description of how coastal political subdivisions will use amounts provided under this section, including a certification by the Governor that such uses are consistent with the requirements of this section.

`(D) Certification by the Governor that ample opportunity has been accorded for public participation in the development and revision of the plan.

`(E) Measures for taking into account other relevant Federal resources and programs.

`(3) PROCEDURE- The Secretary shall approve or disapprove each plan or amendment within 90 days of its submission.

`(4) AMENDMENT- Any amendment to the plan shall be prepared in accordance with the requirements of this subsection and shall be submitted to the Secretary for approval or disapproval.

`(e) AUTHORIZED USES- Producing Coastal States and coastal political subdivisions shall use amounts provided under this section, including any such amounts deposited in a State or coastal political subdivision administered trust fund dedicated to uses consistent with this subsection, in compliance with Federal and State law and only for one or more of the following purposes:

`(1) uses set forth in new section 32(c)(4) of the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.) proposed by the amendment to H.R. 701 of the 106th Congress as reported by the Senate Committee on Energy and Natural Resources;

- `(2) projects and activities for the conservation, protection or restoration of wetlands;
 - `(3) mitigating damage to fish, wildlife or natural resources, including such activities authorized under subtitle B of title IV of the Oil Pollution Act of 1990 (33 U.S.C. 1321(c), (d));
 - `(4) planning assistance and administrative costs of complying with the provisions of this section;
 - `(5) implementation of Federally approved marine, coastal, or comprehensive conservation management plans; and
 - `(6) mitigating impacts of Outer Continental Shelf activities through funding of (A) onshore infrastructure projects and (B) other public service needs intended to mitigate the environmental effects of Outer Continental Shelf activities: Provided, that funds made available under this paragraph shall not exceed 23 percent of the funds provided under this section.
- `(f) COMPLIANCE WITH AUTHORIZED USES- If the Secretary determines that any expenditure made by a Producing Coastal State or coastal political subdivision is not consistent with the uses authorized in subsection (e), the Secretary shall not disburse any further amounts under this section to that Producing Coastal State or coastal political subdivision until the amounts used for the inconsistent expenditure have been repaid or obligated for authorized uses.'

Appendix C -- Comments and Responses

Response to Comments Received on March 29, 2001, Coastal Impact Assistance Program: Draft Program Administration and Plan Development Guidance

The comments and responses are grouped by topic and the source of each comment is identified.

Incurring Costs before Plan is Approved and Funds Disbursed (new section IV.A)

1. Provide allowances for political subdivisions to incur costs on projects proposed for CIAP funding prior to transfer of funds. Political subdivisions that choose to incur advance costs would do so at their own risk. However, once the grant agreement is executed, it would not prevent political subdivisions from reimbursing themselves for such costs. In this manner, there should be no added risk to NOAA or the states. This objective is particularly important because our list of CIAP projects includes some very time-critical efforts. Consequently, we would like to have the opportunity to reimburse ourselves for costs incurred as of July 1, 2001. (Santa Barbara County)

The CIAP submitted by the state could include a request for “pre-award” costs, i.e., a task or set of tasks that describes the administrative costs incurred by the state and or/counties prior to plan submittal and approval, and how these activities meet the eligible uses listed in the statute. Once the plan is approved and the funds disbursed, these costs would be allowable expenses. Only costs incurred after March 1, 2001, when NOAA released the preliminary draft CIAP guidance, may be reimbursed. Please ensure that the CIAP Plan includes a request for pre-award costs.

2. Reimbursement of prior expenses. As usual, the programs that would be funded by this grant would be coordinated with other programs working towards the same objectives. In some cases, it may be important to carry out aspects of the CIAP funded project before execution of the grant agreement. For this reason, we respectfully request that the CIAP guidelines provide for reimbursement of CIAP-eligible expenses incurred prior to completion of the grant agreement. If necessary, a deadline could be set, such as July 1, 2001, the beginning of the applicable California fiscal year. Expenses incurred prior to the deadline would not be reimbursable. (CA)

See response to Comment 1.

3. The guidance provides that CZMA Section 306/309 funds may be used in the development of the plan (*Section III, Page 3*). The guidance should be amended to

clarify that states may use existing CZMA funds, and that CIAP costs may be recoverable and offset from the current CZMA grant in next year's CZMA grant, if needed. (AL)

See response to comment 1. Funds allocated under Section 306/309 of the Coastal Zone Management Act (CZMA) used for authorized CIAP purposes may be recovered by the CIAP grant.

4. Section III, page 3. Following last sentence, add: "Federal 306 or 309 funds used to develop the plan may be reimbursed with coastal impact program funds following plan approval. The state plan should identify plan development costs." (AK)

See response to Comments 1 and 3.

Funding Allocations (II)

5. NOAA is proposing to use the 1990 census data for allocation of the funds among the coastal counties. The 2000 census data is now available, and we request that NOAA use the more current data. (TX)

At the time we began developing the allocation formula, the county level population numbers for the 2000 census had not been finalized and released. We did not expect this information to be released until April 2001 (as required by law), very close to NOAA's release of the CIAP allocations. Based on that information, we decided that to meet the tight time lines established by the program, we would use the 1990 census data. At this time, states and counties have begun developing projects based on these allocations, and it would be too disruptive to re-do the formula and include the 2000 census numbers. If the program continues next year, we are committed to updating the formula.

6. NOAA notes that if NOAA requires less than five percent of the funds for program administration, there will be a supplemental allocation to the states and political subdivisions. Does NOAA have a proposed schedule and process for allocating the supplemental funds? (CA)

We will develop the process and schedule in consultation with states and counties once the level of funding is clear. In general, we would use the same allocation parameters utilized for the original allocations.

Public Participation (III.A.)

7. This section should provide guidance while retaining as much flexibility for the states as possible. The flexibility is necessary because of the short time frame for plan development and review. Rewrite the first paragraph of this section as follows:

The CIAP legislation requires local input and public participation in the development of the plan (§31(d)(1)). To meet this requirement, the state should provide for an adequate public notice of plan availability and a minimum 30-day public comment period. In addition to the 30-day comment period, optional means for public review include:

- (1) use of advisory committees;
- (2) commission meetings;
- (3) informal public workshops;
- (4) formal public hearings;
- (5) public notice and comment during plan development. (AK)

The guidance has been modified to provide more flexibility in the public participation requirements without changing the intent of the CIAP legislation. The legislation specifically requires that the Governor, “provide for public participation in the development of the plan.” (§31(d)(1)) (emphasis added). Therefore the guidance has not been changed to make public participation in the plan development phase optional.

Level of Detail (III.B.)

8. As written, this section (III B) implies that a detailed project budget may need to be submitted prior to disbursement of funds. NOAA’s responsibility is to ensure that local and state projects are consistent with the authorized uses in the CIAP legislation. The suggested rewrite in this section and III.E below provides guidance to states that will assist NOAA’s decision making process without unnecessarily requiring the type of budget detail required for grants under the coastal zone management program.

Rewrite the section as follows:

NOAA shall approve a state plan if the plan is consistent with the purposes specified in the coastal impact assistant program (§31(d)(2)). NOAA will approve plans that describe generally how the state and coastal political subdivisions will expend their funds by describing the types of eligible projects they may undertake. However, NOAA will need to know the specific projects that will be funded with CIAP funds prior to disbursement of the funds. Before the funds are disbursed, the state or coastal political subdivision must submit a project description in the format described under section III.E.4 below. (AK)

The guidance has been revised to clarify that in most cases individual project budgets do not need to be broken down by object class categories (i.e., personnel, equipment, etc.). Instead, only total project costs will be required. However, on a case-by-case

basis, NOAA reserves the right to request more budget detail for large-scale or complex projects that may require more review.

9. (Section III. B., Level of Detail, pp. 3-4) - provides that the “National Oceanic and Atmospheric Administration (NOAA) will approve plans that describe generally how political subdivisions will expend their funds.” This should be amended to state that NOAA shall approve plans that generally describe how “states and” coastal political subdivisions will expend their funds. (AL)

Comment accepted.

10. We are concerned with the level of specificity required in the plan given the short time frame of July 1st to develop the plan. On this note, we request that NOAA extend the July 1st deadline to August 15, 2001. (TX)

In terms of the deadline, NOAA cannot extend the deadline which is a statutory requirement. We do, however, have the authority to hold funds in escrow for a state provided that the state is making a good faith effort to develop and submit, or update, a Coastal Impact Assistance Plan. We recognize the difficult time lines and will use this authority to hold a state's share in escrow. Our goal is to ensure that all states and eligible counties receive their share of the CIAP funding, and we will work with you to ensure that this happens. States that are not going to meet the July 1, 2001 deadline should submit a letter or e-mail to NOAA briefly describing their plan development process and a target date for plan submittal.

11. NOAA indicates that before funds are disbursed, NOAA, the state, and coastal political subdivisions will agree on a mechanism to allow NOAA to review and approve specific local projects after initial plan approval. However, the legislation states that NOAA can approve plan amendments. §31(d)(3) and (4). NOAA should expressly allow states to use the plan amendment process to obtain NOAA's approval of specific local projects. The states can work with the political subdivisions to coordinate and compile the project information to minimize the number of amendments. (TX)

We agree that this is an appropriate mechanism for updating a plan. However, prior to approving a plan amendment which provides details on specific projects, NOAA will not disburse the funds to be expended on those projects (§31(d)(2))

12. The Secretary of Commerce review of a state “plan” and “program” should be limited to the expenditure of the funds consistent with the authorized purposes, as provided in the law, and clarify that the states have the flexibility to amend projects consistent with the plan without complicated grant amendments or delays. (AL)

NOAA agrees that some project modifications should be allowed without triggering the plan amendment process outlined in the CIAP legislation (§31(d) (4)) or requiring an amendment to the CIAP grant.

13. The guidelines need to be very clear on the administration and reporting requirements that the recipients must follow.(FL)

If the grant mechanism is used, these requirements will be detailed in the grant document and NOAA will send additional information to the CIAP grant recipients. General information on NOAA grants can be found on the web at <http://www.rdc.noaa.gov/~grants/>

14. The legislation provides that any amendment to the plan "shall be prepared in accordance with the requirements of this section and shall be submitted to the Secretary for approval or disapproval" (§31(d)(4)). Add clarification that plan amendments will be subject to the same requirements as described for the plan. If possible, provide for an abbreviated process for amendments to projects that have already been subject to public notice as part of the plan and certified as consistent with authorized uses by the Governor. (AK)

This clarification has been made. For ease of administration we will use the same process for reviewing State CIAP Plan amendments as we do for reviewing and approving changes to state coastal management programs. There is an abbreviated process for minor changes and a more involved process for major changes.

Project Funding (III.C.)

15. "All projects do not need to be undertaken solely within the state's coastal zone; for example, the state or a coastal political subdivision may fund a watershed management plan that includes areas beyond the state's coastal zone." (Page 4.) I further note that many impacts of offshore oil and gas development occur inland of the coastal zone where supporting infrastructure, such as processing facilities, tank farms, and pipelines, are located. Thus, funds may be used to enhance public services aimed at mitigating such impacts. (Santa Barbara County)

Thank you for your comment. No change needed.

16. The draft guidelines allow CIAP money to be used on project areas beyond the Coastal Zone. We believe that it is particularly important that this provision remain. Wetlands, watersheds, and the impacts of offshore oil and gas are not restricted to the Coastal Zone, nor are the issues and solutions associated with them.(CA)

This provision has been retained. See response to comment 15.

Governor's Certification (III.D.)

17. "... the Governor may not direct local funds toward or away from any authorized uses, with the exception of the limitation on infrastructure and other public service needs discussed in section IV of this document." (Page 4.) I would add that, given the 23% limitation on funds available to address impacts of OCS development, such funds be directed to those projects and political subdivisions that are, in fact, impacted by OCS activities. Such guidance would help eliminate an inappropriate flow of funds to infrastructure projects in geographic areas unaffected by OCS activities, at the expense of those who are adversely affected. (Santa Barbara County).

No changes have been made to the guidance. Even though infrastructure projects must mitigate impacts of OCS activities, the location of infrastructure projects is not a legislative requirement. This issue is best addressed at the state and county level. However, when NOAA reviews the complete plan, we will determine whether all projects, including infrastructure projects, are consistent with the CIAP legislation.

Please note that the 23 percent limit only applies to "onshore infrastructure and other public service needs" that mitigate impacts of OCS activities. Other activities that mitigate these impacts, such as habitat restoration or research and monitoring, are not affected by the limit.

18. Your guidance on page 4 guarantees each political subdivision its authorized allocation. Responsibility for determining consistency with the authorized uses falls to both the Governor and NOAA; however, you might consider giving NOAA ultimate authority by providing political subdivisions with the opportunity to appeal a Governor's determination. Such ultimate authority would help to ensure consistent interpretation of the legislation across the board. (Santa Barbara County)

Once projects are submitted to NOAA, we do have the responsibility to ensure that all projects, state and local, are consistent with the authorized uses. However, prior to plan submittal, the Governor must make that certification, as required by the CIAP legislation (§31(d)(2)(C)). We will assist states and counties in resolving any issues regarding which projects meet CIAP requirements.

19. Of the CIAP funds, a maximum of 23% is available to provide OCS-related infrastructure and service needs. The guidelines should state explicitly that this money be allocated only to jurisdictions impacted by OCS for projects addressing the effects of OCS (CA)

See response to Comment 17.

Plan Outline (III. E.)

20. As written, this section is a bit confusing because it does not follow the list of plan requirements in the legislation. The proposed rewrite more closely follows the legislation. It also eliminates the implication that states may be required to provide detailed project budget descriptions prior to disbursement of funds. (AK)

Rewrite the entire section as follows:

First paragraph, delete the first sentence ["To expedite disbursement of funds, NOAA recommends that the plan be written and submitted in sufficient detail to serve as a grant application"].

1. Designated State agency.

The CIAP legislation requires that the plan provide the name of the state agency that will have the authority to represent and act for the State in dealing with the Secretary for purposes of the program (§31(d)(2)(A)). The seven governors have already designated agencies to serve as points of contact during plan development. In this section, the plan should state whether the existing contact will also administer the program. If a different agency will administer the program, NOAA will assume that the currently designated agency remains the point of contact until the plan is approved.

2. Certification.

The legislation requires a certification by the Governor that the uses proposed by coastal political subdivisions are consistent with the requirements of the program (§31(d)(2)(C)); and that ample opportunity has been accorded for public participation in the development of the plan (§31(d)(2)(D)). The

certification may take the form of a letter from the Governor submitting the plan to NOAA, or an opening statement from the Governor in the plan itself.

3. Public Participation

This section should describe how the public and coastal political subdivisions were involved in the development of the plan.

4. Implementation Program.

The legislation requires that the state plan contain "a program for the

implementation of the plan which describes how the amounts provided under this section will be used" (§31(d)(2)(B)). This section will be central to NOAA's determination whether a state plan is consistent with the purposes specified in the coastal impact assistant program. The section should contain at a minimum

- (1) a brief description of what the state hopes to achieve under the plan;
- (2) a description of the major activities and/or categories to be funded under the plan (e.g., infrastructure, habitat restoration, acquisition, construction, etc.);
- (3) a description of how the state will implement the plan (e.g., through state agencies, requests for project proposals, competitive grants, etc.); and
- (4) an estimate of the amount of funds that will be spent on each activity or category.

When describing specific projects, the plan should describe the projects in the following manner:

- (1) a one or two paragraph abstract plus up to two pages of background/additional detail, if necessary;
- (2) a brief explanation of how the project is consistent with at least one of the uses authorized by the program; and
- (3) the total cost of the project.

5. Coordination with Other Federal Resources and Programs.

[same as in draft guidance].

6. Coastal Political Subdivision Information.

The CIAP legislation requires that the plan identify a contact for each coastal political subdivision (§31(d)(2)(C)). The list may be attached to the plan and should include the name of each coastal political subdivision, the name of the subdivision's contact and the contact's phone number.

The legislation also requires that the plan contain a description of how coastal political subdivisions will use the amounts provided by the program. This section should contain a description of each political subdivision's plan that follows the

format described in III.E.4.

This response is organized by subsection. The order of the subsections in the guidance was revised as suggested to be more consistent with the legislation. The guidance was revised to clarify that the only budget detail that is needed for most individual projects is a total project cost. See response to comment 8.

First paragraph: NOAA will retain that sentence in the guidance. To ensure funds are disbursed as quickly as possible, NOAA will consider the Plan to be a grant application, and begin the grant approval process at the same time we are reviewing the Plan for consistency with the CIAP legislation. Reviewing the Plan and then asking for a grant application, and conducting a separate review of that, would add unnecessary time and administrative burden.

1. Designated State Agency: NOAA will assume that the currently designated agency remains the point of contact until we receive different information from the Governor. The Governor may make this determination at any time, even after plan approval.

2. Certification: Comment accepted.

3. Public Participation: Comment accepted, with a reference to section III.A. of the guidance.

4. Implementation Program: The format suggested by the comment for the "Implementation Program" section of the CIAP Plan would certainly be acceptable to NOAA, and states may choose to use this format. However, we do not wish to make it a requirement for all states. Similarly, the project description as suggested by this comment is acceptable. NOAA will disburse funds for projects when adequate project detail is available and all required environmental reviews are completed. See response to Comments 24 and 26.

5. Coordination with Other Federal Resources and Programs: No change needed.

6. Coastal Political Subdivision Information: Comment accepted, with minor modifications (include e-mail address of local contacts).

Authorized Uses of Funds (IV)

21. Section IV, page 7-8. Clarification is needed regarding what types of project are considered infrastructure under the legislation. Alaska is receiving questions on whether projects such as breakwaters or erosion control measures would be considered infrastructure. More infrastructure examples are needed. (AK)

Under the CIAP, one of the allowable uses is mitigating the impacts of OCS activities through onshore infrastructure projects. For increased clarity, we have included a

proposed definition for “infrastructure” and “non-infrastructure.”

Infrastructure - Design, engineering, and construction of public services and facilities (such as buildings, roads, bridges, sewer and water lines, wastewater treatment facilities, detention/retention ponds, seawalls, breakwaters, piers, port facilities) needed to support commerce as well as economic development. Infrastructure encompasses land acquisition, new construction, and upgrades and repairs to existing facilities.

Non-infrastructure - Projects that involve construction-type activities that are not considered infrastructure include: wetlands/coastal habitat protection and restoration, vegetative erosion control, and beach re-nourishment (however, sea walls, breakwaters, etc, that may accompany beach re-nourishment projects are considered infrastructure) . Small scale construction projects for public access and resource protection purposes (similar to CZMA section 306A projects) such as boardwalks, dune walkovers, hiking trails, recreational boat ramps, and picnic shelters, as well as land acquisition associated with these projects, are not considered infrastructure. Land acquisition for habitat protection is not considered infrastructure.

These definitions may be modified to address comments.

22. The State would request that NOAA clarify the requirement in (Section IV, pp. 7-8) which allows for public infrastructure and other public service needs. The State would request additional information on how the projects are to meet the statutory requirements of mitigating the environmental effects of Outer Continental activities. It is unclear to the State what is required and what types of projects should be given priority. (AL)

See response to Comments 17 and 21. NOAA believes it is better left up to the state to decide which infrastructure projects mitigate the environmental effects of Outer Continental activities and what types of projects should be given priority. However, when NOAA reviews the complete plan, we will determine whether all projects, including infrastructure projects, are consistent with the CIAP legislation. If you have questions about specific projects, NOAA encourages you to share them with NOAA in advance of submitting the entire plan.

Plan Review and Approval (V)

23. We also think that the guidelines should include a procedure for extensions and for plan revisions, when necessary. (FL)

See response to Comments 10 and 11.

Compliance with Federal Authorities (VI)

24. NOAA will develop, at a minimum, Environmental Assessments (EAs) for approval of each of the seven state CIAP plans. Will the EAs be undertaken and completed concurrent with NOAA's plan approval process? (TX)

Yes. However, some specific projects may require additional review, based on project size and complexity, and the requirements of the National Environmental Policy Act, Endangered Species Act, and other federal laws. We will attempt to use ongoing reviews of projects where possible, and will look to the states and coastal political subdivisions for information on such ongoing reviews.

25. NOAA will use a modified 306A Project Checklist as a screening tool for CIAP projects to ascertain which projects require additional NEPA, ESA, or other compliance review beyond EA. How and when will states receive the modified checklist? (TX)

NOAA is developing a CIAP project review checklist based on an example from Florida. It would only be used for construction and acquisition projects, and its use is voluntary. The checklist will be distributed once its use is approved by the Office of Management and Budget pursuant to the Paperwork Reduction Act.

26. (Section VI, Page 8, Compliance with Federal Authorities) - The State endorses the use of a modified CZM 306(A) checklist. The State does not encourage new additional processes involving complicated and labor-intensive environmental assessments. (AL)

Environmental assessments and other reviews will be conducted as required by relevant federal authorities, including but not limited to, the National Environmental Policy Act and Endangered Species Act.

Disbursing the CIAP Funds (VII)

27. Choose the process and mechanisms that result in the promptest delivery of funds to political subdivisions, and provide flexibility to adjust the process and mechanisms – within reasonable parameters – from one state to another, and from one political subdivision to another to address special circumstances. (Santa Barbara County)

We are committed to implementing the most efficient mechanism possible under the law to deliver the funds and meet the other requirements of the legislation. See response to Comment 29.

28. NOAA states that they will award a single grant to each state. Each state would then issue sub-awards or contracts to the coastal political subdivisions. In this scenario, NOAA would view the state as a transfer agent. However, this is contrary to the

legislation which states that each coastal political subdivisions' allocation shall be paid directly to the coastal political subdivisions by the Secretary. §31(c)(3). NOAA should disburse funds directly to political subdivisions for the specific local projects. (TX).

In recognition of varying state and local circumstances, we have made some modifications. See Response to Comment 29.

29. The legislation states that “[t]hirty-five percent of each Producing Coastal State’s allocable share . . . shall be paid directly to the coastal political subdivisions . . .” §31(c)(3) (emphasis added). The draft guidance indicates that NOAA will likely award a single grant to each state. For Alaska, it would be less complicated procedurally if NOAA disburses allocations directly to each of the state's coastal political subdivisions.

Rewrite the section as follows:

Following plan approval, NOAA will disburse funds for projects specifically described following the format prescribed in section III.E.4 above. Remaining funds will be disbursed when NOAA receives the required project descriptions.

The legislation states that payments to coastal political subdivisions will be paid directly to the political subdivisions (§31(c)(3)). For administrative efficiency, NOAA would prefer to make a single grant to each state. However, NOAA recognizes that some states would prefer a direct allocation be made to each coastal political subdivision. Therefore, upon request by a state, NOAA will disburse allocations directly to the state's coastal political subdivisions. (AK)

We have revised the guidance to state that, if a grant mechanism is used, NOAA will award individual grants directly to the state and all coastal political subdivisions within the state. NOAA is also exploring whether we may award a single grant to a state, with the state then issuing sub-awards or contracts to the coastal political subdivisions. We would use the latter method only if agreed upon by, the NOAA Grants Office, the state and coastal political subdivisions.

30. Ensure that political subdivisions may receive up-front payment of its formula allocation if they so choose, whether or not the states serve as the transfer agents. (Santa Barbara County)

If a grant mechanism is used, a state or county may not draw down the entire amount of funds up-front, but on a “pay as you go” basis. This means that funds may be drawn down a reasonable amount of time in advance of when they are needed. The Department of Commerce Financial Assistance Standard Terms and Conditions (October 1998) state that “Advance [payments] shall be limited to the minimum amounts necessary to meet

immediate disbursement needs...Advances shall be approved for periods not to exceed 30 days.” If a grant mechanism is used, NOAA will provide additional information on this topic.

31. Each coastal state is different from any other. That Florida has 67 coastal counties (more than 3 times that of any of the other CIAP states) is the source of its greatest challenge in administering the CIAP, from plan development to grant administration to disbursement of funds. We would hope that you would contemplate in the final draft of your guidelines the option of NOAA's administering the coastal county portion of the grants directly, with respect to both reports and disbursements, if any of the states deem it appropriate to request that.(FL)

See Response to Comment 29.

32. The guidelines should state explicitly that the State's 65% of the allocated funds must cover all administrative costs associated with managing and transferring local jurisdictions' authorized allocations. Your draft guidelines do state that local coastal jurisdictions' authorized allocations are to be spent on their projects; however, it should be clarified that this does not include the State's expenses in administering the grants. (CA)

The guidance has been modified to reiterate this point.

33. “The coastal political subdivisions would be guaranteed their formula allocation of funds to be spent on their projects that are part of the state plan.” (Page 9.) This provision is important if you ultimately designate the states as the transfer agents, since the states will undoubtedly assume a greater administrative burden in completing this task. The foregoing restriction would ensure that the cost of this added administrative burden is covered from each state’s 65% share of the allocated funds. (Santa Barbara County)

That is the intent of the legislation and the guidance. No change needed.

34. NOAA should allow states the ability to authorize a time period of up to 3 years to be given to entities, with approved projects, to spend their allocated funding.(TX)

We agree, and have modified the guidance accordingly.

35. (Section VII, Page 9) - Does not have an end date for expenditure of the funds. We would request that a three-year period be allowed for the completion of CIAP projects and that an extension of one year could be requested, if needed. (AL)

Comment partially accepted. At this time, NOAA does not wish to put a limit on the amount of time for which states may request extensions.

Trust Funds (new section VII.A.)

36. The CIAP legislation allows states or coastal political subdivisions to deposit funds in trust funds dedicated to uses consistent with the legislation. Can the interest from the trust fund be used as match for Federal dollars? (TX)

No. Any interest must be returned to the Federal government. The “Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments” (15 CFR Part 24) provide that advance payments made to a recipient are to be placed in an interest-bearing account until actually disbursed and that the interest earned is to be returned to the Federal government. The issue, then, is whether placing the money in the trust funds constitutes a “disbursement.” The Department of Commerce has determined that placing the CIAP grant money in the trust fund would not be considered a disbursement and therefore the interest would need to be returned to the federal government.

37. “The CIAP legislation allows states or coastal political subdivisions to deposit funds in trust funds dedicated to uses consistent with the legislation (§31(e)).” (Page 9.) Please adjust this to read: “The CIAP legislation allows states *and* coastal political subdivisions to deposit funds in trust funds dedicated to uses consistent with the legislation (§31(e)).” This amendment clarifies that a political subdivision may, at its own choosing, employ the trust fund option for its share of the funds without needing approval of the state to do so. Please include any other wording that further clarifies this intent. (Santa Barbara County)

The change has been made.

38. Additional guidance is needed regarding trust funds. In regard to administration of the funds, the legislation states that funds may be deposited in a state or coastal political subdivision “administered” trust fund (§31(e)). Therefore, it seems appropriate that each state or political subdivision establish its own means to administer the funds.

In addition, there is a question regarding whether the Cash Management Act requires that the state pay interest earned on federal funds back to the federal government. The CIAP legislation specifically contemplates a state administered trust fund and requires that the trust fund be dedicated to uses consistent with the legislation. Consequently, it seems unlikely that Congress intended that the interest from a CIAP trust fund must be paid back to the federal government. Also, having to pay some of the funds back would create all sorts of procedural problems Congress could not have intended.

Add the following new section (delete last paragraph in VII):

IX. Trust Funds.

The legislation allows for program funds to be deposited in a State or coastal political subdivision administered trust fund dedicated to uses consistent with the program (§31(e)). The trust fund must be dedicated to uses consistent with the purposes authorized under the Coastal Impact Assistance program and earnings on monies in the trust fund must be retained in the trust fund and used for program purposes.

How a trust fund is set up and administered will be decided by the individual states.

NOAA will disburse CIAP funds for a state or coastal political subdivision trust fund prior to knowing the specific projects that will be funded. NOAA will work with the states to establish a mechanism for project review prior to actual expenditure of the funds from the trust. (AK)

See response to Comment 36.

Compliance with Authorized Uses of Funds (VIII)

39. Additional guidance is needed regarding what NOAA will require in the semi-annual reports. The reporting requirement should be limited to what is necessary for NOAA to determine that states and political subdivisions are expending CIAP funds consistently with the legislation. (AK)

Rewrite the section as follows:

The CIAP legislation states that if NOAA finds that a state or coastal political subdivision has expended funds inconsistently with the specified uses, NOAA will cease disbursing further funds to that state or political subdivision until the funds in question have been repaid or obligated for authorized uses (§31(f)). If a coastal political subdivision that receives its allocation through the state is expending funds inconsistently with the specified uses, the state's remaining funds will not be withheld. However, the state will be directed to withhold disbursement of funds from the inconsistent subdivision until the matter is resolved.

To ensure all funds are spent on authorized uses, the states will submit semi-annual progress reports to NOAA until all funds have been expended. The report must include all uses of state and coastal political subdivision funds. At a minimum, the report should include:

- (1) an identification of the projects approved in the plan;

(2) the status of each project, including accomplishments and expenditures to date; and

(3) estimated time for completion.

If some or all of the funds have been deposited in a trust fund, the trust fund must report semi-annually on the uses of those funds.

The guidance has been clarified to state that, if local funds need to be withheld from political subdivisions receiving their allocations through the state, only funds for those subdivisions, not other subdivisions or the state, will be withheld.

The guidance has been revised to state that NOAA will require annual, not semi-annual reports. In addition, NOAA will accept separate reports from the state and each political subdivision, so the state will not need to receive and collate local reports (the state may choose to receive the local reports).

Comment accepted regarding content of progress reports, with modifications.